IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929
WP(C).No. 29110 of 2007(M)
---
OS.233/1995 of SUB COURT,TRIVANDRUM
.....

PETITIONER:
---
C.K.HRISHIKESHAN NAIR,
SARANYA CO-OPERATIVE HOUSING GARDENS,
MANNAMOOLA, PEROORKADA VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:
---
1. KRISHNA PILLAI KESAVA PILLAI,
VALIYAKUNNATHU VEEDU, ARASUPARAMBU, NEDUMANGAD.

2. RAMAKRISHNA PILLAI KRISHNA PILLAI,
SYAMALAYAM DARSHAN NAGAR, KUDAPPANAKUNNU.

3. AMMUKUTTY AMMA,
PADMAVILASATHU VEEDU, DARSHAN NAGAR,
KUDAPPANAKUNNU, PEROORKADA, THIRUVANANTHAPURAM.

4. RAMAKRISHNA PILLAI VIJAYAN NAIR,
UMAMANDIRAM, KACHANI P.O., THIRUVANANTHAPURAM.

5. AMMUKUTTY AMMA BHAMA DEVI,
BHAMALAYAM, ARASUPARAMBU, NEDUMANGAD.

6. A.RADHABHAI,
MADATHIL VEEDU, ARASUPARAMBU VEEDU,
NEDUMANGAD.

7. RAMAKRISHNA PILLAI RAMACHANDRAN NAIR,
CHANDRA BHAVAN, VEMBU, KURAPUZHA, EDAVATTOM P.O.

8. KRISHNA PILLAI VASUDEVAN PILLAI,
LEKSHMI BHAVAN, TC 4/51, KURAVANKONAM,
KOWDIAR VILLAGE.

9. VASUDEVAN PILLAI MADHUSOODANAN NAIR,
LEKSHMI BHAVAN, TC 4/51, KURAVANKONAM,
KOWDIAR VILLAGE.

10. Vasudevan Pillai Muraleedharan Nair,
K.P. 111-320 Kamukarakonam, Vattappara Village.

11. Vasudevan Pillai Rajasekharan Nair, Lekshmy Bhavan
T.C. 4/51, Kuravankonam Ward, Kowidar Village,
Thiruvananthapuram.

BY ADV. SRI.SUMAN CHAKRAVARTHY
SRI.BRIJESH MOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# Appendix

Petitioner's Exts:

Ext.P1 true copy of the Will dated 15.7.94 executed by Smt. Lakshmi Pillai Narayani Pillai in favour of her three nephews Madhusoodhanan Nair, Muralidharan Nair and Rajasekharan Nair.

Ext.P2 true copy of the report No.B1-3250/FSL/98 dated 15.5.99.

Ext.P3 true copy of the judgment in OP 8004/2002 of this Hon'ble Court.

Ext.P4 true copy of the judgment in WP 24653/03 of this Hon'ble Court.

Ext.P5. true copy of the plaint in OS 233/1995.

Ext.P6 true copy of the letter No.1092/02 dated 30.4.2007 of the learned First Class Judicial Magistrate's Court-I, Attingal.

Ext.P7 true copy of the letter dated 20.6.2007 of the learned Sub Judge.

Ext.P8 true copy of the interim application No.4439/2007.

Ext.P9 true copy of the interim application supported by an affidavit seeking restoration of Ext.P8.

**M.N.Krishnan, J.**

**==========**

**W.P(C).No.29110 of 2007**

**==========**

**Dated this the 27th day of November, 2007.**

**JUDGMENT**

This Writ Petition is filed to direct the First Additional Subordinate Judge, Thiruvananthapuram to forward the disputed Will involved in C.C.No.282 of 2000 on the file of the Judicial First Class Magistrate's Court-I, Nedumangad. Plaintiffs have instituted a suit before the Subordinate Judge, Thiruvananthapuram as O.S.No.233 of 1995 for partition. Some of the defendants resisted the suit on the strength of the Will, which is in dispute. Meanwhile, there is also a criminal case pending before the Judicial First Class Magistrate -I, Nedumangad wherein the case relates to the question whether it is a forged document or not. It is submitted by the contesting defendants' counsel that the original of the Will was produced before the Subordinate Judge's Court along with the written statement and as per the request of the Public Prosecutor, the Will was sent over to the Magistrate's Court for getting an expert opinion and thereafter it has come back and at his request the Will has been again sent back to the Subordinate Judge and the case is proceeded with evidence at this stage and the plaintiffs' evidence is almost closed.

2. Learned counsel for the second defendant, who has filed the complaint before the Magistrate Court would submit that priority has to be given to the trial of a criminal case and he had drawn the attention of this Court to the decision of the Apex Court reported in **M.S. Sheriff** v. **State of Madras** - A.I.R. 1954 S.C. 397. The Apex Court held in the above case that as between the civil and the criminal proceedings the criminal matters should be given precedence. It is also stated therein that special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to prosecution ordered under Section 476. Further it is the accused in this case who wants the civil case to be disposed of.

3. Here is a case where as laid down by the Apex Court, the civil case is almost on the verge of culmination and therefore special circumstances exist to depart from normal rule. In both the matters original of the Will is necessary for a proper disposal of the case. I am informed by the counsel for the defendant, who relied on the Will that the plaintiffs' evidence is closed in the case and therefore it will cause undue hardship, if the will is now directed to be sent over to the Magistrate's court. There is some force in the said contention.

4. Unless positive direction is given to the courts below, the matter cannot attain finality in both the courts and therefore I

direct the Subordinate Judge, Thiruvananthapuram where O.S.No.233 of 1995 is pending to finally dispose of the matter, at any rate, before 28.2.2008 and thereafter send the original of the Will to the Judicial First Class Magistrate's Court-I, Nedumangad for trial in C.C.No.282 of 2000. Till that time as the criminal trial has not been commenced, it be kept in abeyance. I also direct the criminal court to commence the trial immediately on receipt of the document.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 27/11